

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 THE BRINNON GROUP,
6
7 Petitioner,
8
9 v.
10 JEFFERSON COUNTY,
11 Respondent,
12
13 and
14 PLEASANT HARBOR MARINA AND GOLF
15 RESORT, LLP,
16
17 Intervenor.

Case No. 18-2-0005

FINAL DECISION AND ORDER

18
19 **SYNOPSIS**

20 *The Brinnon Group (Petitioner) challenged Jefferson County's (County) adoption of*
21 *Master Planned Resort (MPR) Ordinances allowing property owner Pleasant Harbor Marina*
22 *and Golf Resort, LLP (Intervenors) to develop a phased-in Master Planned Resort on Hood*
23 *Canal. Issue 1 regarding State Environmental Policy Act was dismissed at the request of the*
24 *Petitioner. For Issues 2-5, the Board concluded Petitioner has not carried its burden of proof*
25 *demonstrating the County failed to meet requirements in RCW 36.70A.360 and closed the*
26 *case.*
27

28
29 **I. BACKGROUND**

30 Petitioner challenged Ordinance 03-0604-18 (Ordinance-03 amending Development
31 Regulations) and Ordinance 04-0604-18 (Ordinance-04 adopting a Development
32

1 Agreement), together the MPR Ordinances. The history of this case reveals that Petitioner,
2 the County, and Intervenor, or its predecessor, have addressed issues around this MPR for
3 16 years. In 2002, the County adopted the Brinnon Subarea Plan, which identified over 300
4 acres south of the village of Brinnon as a “conceptual” MPR location. The County
5 incorporated the Brinnon Subarea Plan into its County’s Comprehensive Plan (CP) which
6 included much of Black Point, a peninsula on the west side of Hood Canal and directly
7 south of Brinnon and the Pleasant Harbor Marina.¹ At the time, the County indicated that
8 Black Point’s existing “recreational and visitor support activities” included two marinas, a
9 recreational vehicle park and other service-oriented businesses, which made the area
10 appropriate for an MPR. The County’s CP and County Code included specific policies to
11 guide MPR development.²

12
13 In 2006, in accordance with County policies and codes, property owner Statesman
14 Group of Companies Ltd. sought a site-specific CP amendment in order to develop an MPR
15 on about 251 acres in the conceptual MPR area on Black Point.³ In September and
16 November 2007, the County issued draft and final Environmental Impact Statements on the
17 proposed MPR.⁴ On January 28, 2008, the Board of County Commissioners (BOCC)
18 adopted Ordinance No. 01-0128-08 which:⁵

19
20 (1) Amended a map in the County’s Comprehensive Plan Land Use Designations
21 maps to reflect an underlying land use designation of MPR for parcels included in the
22 Statesman proposal and changed the CP narrative regarding MPR;⁶

23
24 ¹ *Brinnon Grp. v. Jefferson Cty.*, 159 Wash. App. 446 (2011) at 455-6.

25 Also see RCW 36.70A.360(4)(a)The comprehensive plan specifically identifies policies to guide the
26 development of master planned resorts.

27 ² *Id.* at 455.

28 ³ Petitioner’s Prehearing Brief (November 1, 2018) at Tab 2008-003 Ordinance 01-0128-08.

29 ⁴ *Id.* at 456-8 and Jefferson County Response Brief (November 26, 2008) at Tab 3. The County’s Draft EIS
30 issued in September 5, 2007, had two components: (1) a 220+-acre golf course and resort east of Highway
31 101 and south of Black Point Road and (2) a 37+-acre marina and a maritime village east of Highway 101 and
32 north of Black Point Road.

⁵ *Id.* at Tab 2008-003.

⁶ *Id.* at Log 2008-003-00016 “Early in 2008, Jefferson County designated a new Master Planned Resort (MPR)
in Brinnon. The new Master Planned Resort is 256 acres in size and includes the Pleasant Harbor and Black
Point areas. The Marina area is existing and would be further developed to include additional commercial and
residential uses such as townhouses and villas. The Black Point area of the new resort would include new

1 (2) Incorporated the MPR boundary map that the BOCC attached to the approved
2 ordinance into the comprehensive plan;⁷ and

3 (3) Placed 30 conditions on the MPR development in Finding 63.⁸
4

5 In 2008 Petitioner challenged County Ordinance No. 01-0128-08 in both Clallam
6 County Superior Court⁹ and with the Growth Management Hearings Board (Board).¹⁰ The
7 2008 petition to the Board alleged noncompliance with public participation, internal
8 consistency and environmental requirements in Growth Management Act (GMA) and State
9 Environmental Policy Act (SEPA). The Board found Jefferson County's "Ordinance 01-0128-
10 08 the first step of a five step process that would lead to the development of the Brinnon
11 MPR" and found Petitioner failed to demonstrate GMA or SEPA violations.¹¹ In 2009,
12 Petitioner appealed the Board's final 2008 decision to the Thurston County Superior Court
13 and also petitioned the Clallam County Superior Court for a constitutional writ of certiorari
14 and a statutory writ of review. The Thurston County court upheld the Board's decision and
15 the Clallam County court dismissed the Petitioner's request with prejudice. Petitioner
16 subsequently appealed both Superior Court decisions to the Court of Appeals, Division II,
17 which also affirmed the Board's 2008 decision as well as the dismissal of the writ
18 proceeding.¹² In the current 2018 case before this Board, Petitioner alleges various
19 violations in Ordinance of RCW 36.70A.360. On December 18, 2018, the Board held a
20 Hearing on the Merits in Port Townsend, Washington. Procedural matters relevant to the
21
22
23

24 facilities such as a golf course, a restaurant, a resort center, townhouses, villas, staff housing, and a
25 community center. The overall residential construction would not exceed 890 total units."

26 ⁷ *Id.* at Log 2008-003-00024.

27 ⁸ *Id.* at Log 2008-003-0010 through – 0015 *NOTE:* The 30 conditions are included as part of the SEPA action
28 taken by the County.

29 ⁹ *Brinnon Grp. v. Jefferson Cty.*, 159 Wash. App. 446, 245 P.3d 789 (2011) at 460 "...Brinnon Group filed a
30 complaint for constitutional writ of certiorari and statutory writ of review in Clallam County Superior Court,
31 asking the court to void the ordinance... The complaint stated that Brinnon Group planned to exhaust its
32 administrative remedies by filing a petition for review with the Board in order to address the County's alleged
GMA and SEPA violations."

¹⁰ *Brinnon Group and Brinnon MPR Opposition v. Jefferson County*, GMHB No. 08-2-0014.

¹¹ *Id.* Final Decision and Order (September 15, 2008) at 36.

¹² *Brinnon Grp. v. Jefferson Cty.*, 159 Wash. App. 446, 245 P.3d 789 (2011).

1 case are detailed in Appendix A. Legal issues relevant to the case are in Appendix B.
2 Appendix C lists the 30 conditions cited by Petitioner in Ordinance No. 01-0128-08.

3 4 **II. BOARD JURISDICTION**

5 The Board finds the Petition for Review was timely filed, pursuant to RCW
6 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board
7 pursuant to RCW 36.70A.280(2)(b). Pursuant to RCW 36.70A.280(1) the Board has subject
8 matter over that portion of the petition alleging GMA violations resulting from the adoption of
9 Ordinance-03 amending Development Regulations, but not over Ordinance-04 adopting a
10 Development Agreement as discussed below on pages 5-7.
11

12 13 **III. STANDARD OF REVIEW**

14 The Board assumes comprehensive plans and development regulations, and
15 amendments to them, are valid upon adoption.¹³ This presumption creates a high threshold
16 for challengers as the burden is on the Petitioner to demonstrate that any action taken by
17 the County does not comply with the Growth Management Act.¹⁴ The Board is charged with
18 adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and
19 development regulations.¹⁵
20

21 The scope of the Board's review is limited to determining whether a County has
22 achieved compliance with the GMA only with respect to those issues presented in a timely
23 petition for review.¹⁶ The GMA directs the Board to find compliance unless it determines that
24 the challenged action is clearly erroneous in view of the entire record before the Board and
25 in light of the goals and requirements of the GMA.¹⁷
26
27

28 ¹³ RCW 36.70A.320(1).

29 ¹⁴ RCW 36.70A.320(2).

30 ¹⁵ RCW 36.70A.280, RCW 36.70A.302.

31 ¹⁶ RCW 36.70A.290(1).

32 ¹⁷ RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993)*.

1 **IV. PRELIMINARY MATTERS**

2 **Intervention:** Following a Motion to Intervene and the Board’s prehearing conference, the
3 Board granted Intervenor status to property owner Pleasant Harbor Marina and Golf Resort,
4 LLP.¹⁸

5
6 **Official Notice:** At the request of the County and in accordance with WAC 242-03-630(4),
7 the Board takes official judicial notice of applicable Jefferson County code, ordinances,
8 comprehensive plan and its amendments.¹⁹

9
10 **Motion to Dismiss Ordinance-04 Development Agreement:** Intervenor moved to dismiss
11 the appeal of Ordinance No. 04-0604-18 Development Agreement (DA) claiming the Board
12 lacks jurisdiction to review DAs except in limited circumstances.²⁰ Intervenor stated the DA
13 is on appeal in Kitsap County Superior Court under the Land Use Petition Act (LUPA), and
14 that court has ruled the DA was a land use decision subject to the jurisdiction of the superior
15 courts under LUPA.²¹ Next, Intervenor argued the Board has no jurisdiction over issues
16 alleging a lack of compliance with Jefferson County Codes because the Board’s jurisdiction
17 is limited to whether comprehensive plans and development regulations comply with the
18 GMA.²² Finally, Intervenor argued that all issues relating to the County’s compliance with
19 the 30 conditions imposed on future development of the MPR by Ordinance No. 01-0128-08
20 should be dismissed because those conditions apply to project specific reviews, and are not
21 comprehensive plans or development regulations.²³ The County concurred with Intervenor’s
22 Motion for Partial Dismissal.²⁴ Petitioner opposed Intervenor’s Motion claiming the DA
23 included development regulations in Appendix A and the two Ordinances “cross-reference”
24
25
26

27
28 ¹⁸ GMHB No. 18-2-0005 (Prehearing Order and Order Granting Intervention, September 7, 2018).

29 ¹⁹ County Response Brief (November 26, 2018) at 6 FN 4. See also Jefferson County Code:
<https://www.codepublishing.com/WA/JeffersonCounty/>.

30 ²⁰ Intervenor’s Motion for Partial Dismissal (September 17, 2018) at 6.

31 ²¹ *Id.* at 5.

32 ²² *Id.* at 7.

²³ *Id.* at 8.

²⁴ Jefferson County’ Notice of Joinder in Intervenor’s Motion for Partial Dismissal (September 17, 2018).

1 each other.²⁵ The Board deferred ruling on Intervenor’s Motion for Partial Dismissal, but
2 addresses Intervenor’s motion in this Final Decision and Order.²⁶

3 4 Board’s Jurisdiction over Development Agreements

5 Having reviewed the parties’ arguments, the Board finds it does not have jurisdiction
6 over Development Agreements. The challenged DA was adopted by the County under the
7 authority in RCW 36.70B.170 – 210.²⁷ RCW 36.70B.170 clearly authorizes local
8 governments to enter into DAs with property owners and in return, a county may impose
9 among other things, development standards, mitigation requirements, and vesting
10 provisions.²⁸ Here, the DA is a project permit application because it establishes site-specific
11 development standards for future development on a specific parcel of land as authorized
12 under RCW 36.70B.170.²⁹

13
14 In regards to DA appeals, RCW 36.70B.200 states “If the development agreement
15 relates to a project permit application, the provisions of chapter 36.70C RCW shall apply to
16 the appeal of the decision on the development agreement.” Here, the County specifically
17 stated the DA was a “final land use action pursuant to RCW 36.70C.020.”³⁰ RCW
18 36.70C.020(2) defines “land use decision” as follows:

19
20 (2) "Land use decision" means a final determination by a local jurisdiction's
21 body or officer with the highest level of authority to make the determination,

22
23 ²⁵ Opposition of Petitioner Brinnon Group to Motion for Partial Dismissal (September 27, 2018) at 3 “The
24 development regulations approved by the 03 Ordinance are found at Appendix A to the Development
25 Agreement, and referenced in Section 12.21. Section 12.21 of the Development Agreement includes Exhibits
26 1-4 (the master plan maps) and indicates there are “no other agreements, oral or written, except as expressly
27 set forth herein.”

28 ²⁶ *Brinnon v Jefferson County*, GMHB No. 18-2-0005 (Order Deferring Motion for Partial Dismissal, October
29 18, 2018).

30 ²⁷ County Brief (November 26, 2018) at Tab 8, Log 2018-104-00011 Ordinance No. 04-0604-18 Adoption of a
31 Development Agreement.... “This DEVELOPMENT AGREEMENT is entered intopursuant to RCW
32 36.70B.170-210”.

²⁸ RCW 36.70B.170 Development agreements—Authorized.
<https://app.leg.wa.gov/RCW/default.aspx?cite=36.70B.170>.

²⁹ County Response Brief at Tab 8, Log 2018-104-00012 See 3.1 The Property Description ...consists of
approximately 237.88 acres and is described in particularity in Exhibit 1 (Legal Descriptions at Log 2018-104-
00037).

³⁰ *Id.* at Tab 8, Log 2018-104-00011.

1 including those with authority to hear appeals, on:

2 (a) An application for a project permit or other governmental approval required
3 by law before real property may be improved, developed, modified, sold,
4 transferred, or used, but excluding applications for permits or approvals to use,
5 vacate, or transfer streets, parks, and similar types of public property;
6 excluding applications for legislative approvals such as area-wide rezones
and annexations; and excluding applications for business licenses...
7 [emphasis added]

8 While Petitioner argues that the DA was a “legislative action,” and thus appealable under
9 RCW 36.70A,³¹ the County’s action was a final land use action pursuant to RCW
10 36.70C.020. In fact, RCW 36.70C.020 excludes “legislative approvals” for area-wide
11 rezones or annexations because those actions are appealable under the GMA, RCW
12 36.70A.280.³² But here, the DA is neither an area-wide rezone nor an annexation and thus
13 does not fall under the GMA appeal process. **The Board finds and concludes it does not
14 have jurisdiction over development agreements. The Board GRANTS Intervenor’s
15 Motion for Partial Dismissal in regards to the Development Agreement adopted by
16 Ordinance 04.**

17 Board’s Jurisdiction over County Codes

18
19 Intervenor also requested the Board dismiss all allegations relating to compliance or
20 lack thereof with the Jefferson County Code.³³ Petitioner responded that the Board should
21 review whether “implementing ordinances are consistent with statutory requirements for a
22 MPR found in RCW 36.70A.360; however, Petitioner also conceded that the Board may not
23
24
25

26 ³¹ Petitioner’s Opening Brief (November 1, 2018) at 6 “RCW 36.70A.280(1) vests this Board with review of
27 petitions alleging that a county “is not in compliance with the requirements of this chapter.” Unlike other more
28 generic provisions of the GMA, Master Planned Resorts under Section 360 must meet express statutory
29 criteria to be approved. These criteria are plainly “requirements of this chapter.”” And Opposition of Petitioner
30 to Motion to Dismiss (September 27, 2018) at 6.

31 ³² RCW 36.70A.280(1)(a) That, except as provided otherwise by this subsection, a state agency, county, or city
32 planning under this chapter is not in compliance with the requirements of this chapter....

33 Intervenor’s Motion for Partial Dismissal (September 17, 2018) at 7. Petitioner’s allegations are that both
Ordinances fail to comply with section of title 18.15 of the Jefferson County Code for master planned resorts.
See Prehearing Order and Order Granting Intervention, Issues 2(c), 2(g), 2(i), 3, 4 and 5.

1 have jurisdiction over allegations relating to County codes.³⁴ The Board's jurisdiction as
2 specified in RCW 36.70A.280 and .290 does not extend to whether a County's actions
3 comply with its own codes. Rather the Board can only rule whether a comprehensive plan or
4 a development regulation meet requirements in chapter 36.70A RCW. In this case,
5 Petitioner's Sub-Issues 2(c), 2(g), 2(i) and Issues 3, 4, and 5 seek the Board's ruling on
6 whether the MPR Ordinances meet Jefferson County Codes. The Board has no jurisdiction
7 to address those questions. **The Board finds and concludes it does not have**
8 **jurisdiction over allegations of noncompliance with County codes in Sub-Issues 2(c),**
9 **2(g) 2(i) and Issues 3, 4, and 5. The Board GRANTS Intervenor's Motion for Partial**
10 **Dismissal of those allegations.**

11
12
13 Board's Jurisdiction over 30 Conditions in Previous 2008 Ordinance 01-0128-08

14 Intervenor moved to dismiss all issues alleging noncompliance with the 30 conditions
15 applicable to development of the MPR imposed by Ordinance No. 01-0128-08 because the
16 30 conditions "...concern project specific development conditions and are not reviewable by
17 the Board."³⁵ In opposition to Intervenor's motion, Petitioner argued "...that a location for
18 the MPR has been selected does not mean that the actual development meets the statutory
19 criteria" and interpreted the Board's 2008 Order to mean that the Board would once again
20 review and approve the actual development.³⁶ However, upon review, the Board does not
21 find Petitioner's argument compelling. Petitioner only quotes part of the Board's 2008 Order.
22 The subsequent statement in the Board's 2008 Order clearly states the County will find the
23 MPR consistent with county plans and codes:
24
25

26 Furthermore, the densities and intensities were analyzed within the DEIS and

27
28 ³⁴ Opposition of Petitioner to Motion for Partial Dismissal (September 27, 2018) at 15 "the Board believes that
29 its inquiry is limited to only the terms of the MPR statute, it can disregard or remove references to the
Jefferson County code."

30 ³⁵ Intervenor's Motion for Partial Dismissal (September 17, 2018) at 7 and 8.

31 ³⁶ Petitioner Opening Brief (November 1, 2018) at 7 "Its in prior decision on this MPR, the Board noted that, for
32 the Pleasant Harbor MPR: "Building intensities will be defined and limited in the master plan and development
agreement as specified in the Jefferson County Code. *These will need further review and approval.*" *FDO at*
27." [emphasis added]

1 FEIS. The MPR must develop within the scope of that environmental review.
2 No development permits can be issued until the BOCC finds that the MPR is
3 consistent with the Jefferson County Plan, development code, and conditions
4 imposed by the master plan and development agreement.³⁷ [emphasis added]

5 Clearly, the Board's 2008 Order states the County must find the MPR consistent with its
6 own CP, development regulations and conditions. The conditions mentioned in the Board's
7 2008 Order are from County Ordinance No. 01-0128-08 and although that Ordinance and
8 the 30 conditions are cross-referenced in the presently challenged Ordinance No. 03,³⁸ this
9 does not change the fact that the Board does not have jurisdiction over those 30 conditions.
10 They are site-specific conditions applying to a site-specific project.³⁹ **The Board finds and**
11 **concludes it does not have jurisdiction over issues alleging a lack of compliance with**
12 **the 30 conditions. The Board GRANTS Intervenor's motion to dismiss portions of all**
13 **issues alleging noncompliance with the 30 conditions.**

14
15 Although the Board has granted Intervenor's Motion to Dismiss and finds there is no
16 need to consider whether the Development Agreement, County codes and the 30 conditions
17 comply with the GMA, the Board will more narrowly focus on whether the County has
18 properly approved a "Master Planned Resort" in accordance with the 6 required elements
19 specified in RCW 36.70A.360. The Board will take into consideration the effect of the DA
20 and the 30 conditions in addressing whether the Petitioner has met its burden to establish
21 that Ordinance-03 amending Development Regulations violates RCW 36.70A.360. The DA
22 and the 30 conditions can be sources of evidence that, when aggregated, assist the Board
23
24
25

26 ³⁷ *Brinnon Group v. Jefferson County and Pleasant Harbor*, GMHB No. 08-2-0014 (Final Decision and Order,
27 September 15, 2008) at 27.

28 ³⁸ County Brief at Tab 9, Log 2018-105-00002 "Whereas, all of the findings, conclusions and conditions listed
29 in paragraph 63 of Ordinance No. 01-0128-08 are incorporated herein..."

30 ³⁹ County Brief at Tab 1 at Log 2008-003 – 00010 through 00015 Paragraph 63 (a) – (dd) contains 30
31 conditions imposed on the MPR by the County under SEPA RCW 43.21C.060. The conditions range from
32 automatically imposing DNS environmental analyses at the project level, negotiating levels of services needed
with local fire districts, emergency medical services, transit services to negotiating water storage, water
quantity and quality, sewage treatment, wildlife plans, forest and open space management and calculating
greenhouse gas emissions associated with the MPR.

1 in deciding whether the Petitioner has carried its burden to show noncompliance with RCW
2 36.70A.360.

3 4 **V. ANALYSIS AND DISCUSSION**

5 **Issue No. 1**

6 Did Jefferson County fail to comply with the State Environmental Policy Act, Chapter 43.21C
7 RCW (SEPA), the SEPA Rules, Chapter 197-11 WAC and local Jefferson County SEPA
8 regulations by failing to consider the environmental impacts of the "Pleasant Harbor Golf
9 Terrace Recreation and Conference Center/Spa" in the Master Plan and Phasing Plan?
See WAC 197-11-158; 197-11-340(3)(ii); 197-11-600.

10 **Board Discussion**

11 Petitioner failed to brief this issue and confirmed in its opening brief that it had
12 withdrawn Issue 1. The Board dismisses Issue 1.⁴⁰

14 **Issue No. 2**

15 Did the MPR Ordinances fail to comply with the terms of RCW 36.70A.360, the Jefferson
16 County Comprehensive Plan and its adopting Ordinance 01-0128-08 because these
17 ordinances:

- 18 a) Do not meet the requirements for an adequate description of destination resort
19 facilities found in RCW 36.70C.360 [sic] and in Ordinance 01-0128-08,
20 Paragraphs 63(d), (u), and (v)?
- 21 b) Do not meet the requirement of Paragraph 63(m) of Ordinance 01-0128-08 that
22 "no deforestation or grading will be permitted prior to establishing adequate water
23 right and an adequate water supply" because Exhibit 4 to the development
24 agreement provides for extensive site grading in Phase 1a, while provisions for
25 water storage and distribution are only allowed in Phase 1b?
- 26 c) Do not meet the requirements of Ordinance 01-0128-08, Paragraph 63(u) and (v)
27 and JCC 18.15.126(1) (d) because the Master Plan Drawings at Exhibit 2 and
28 Exhibit 4 are contradictory, showing uses in different locations and features that
29 are not reconcilable and are not shown in sufficient detail to meet the
30 requirements of these codes?

31 _____
32 ⁴⁰ Petitioner Opening Brief (November 1, 2018) at 8, FN 3 "Appellant has withdrawn Issue 1 found in the
Prehearing Order regarding SEPA."

- 1 d) Do not meet the requirements of RCW 36.70A.360(1) and WAC 365-196-460(2)
2 requiring MPRs to have “a primary focus on destination resort facilities consisting
3 of short-term visitor accommodations associated with a range of developed on-
4 site indoor or outdoor recreational facilities?”
- 5 e) Do not meet the requirements of Ordinance 01-0128-08 Paragraphs (u) and (v)
6 because they do not show of screening of facilities and amenities, do not
7 demonstrate that proposed structures are “harmonious with each other to protect
8 natural features, historic and public views,” and do not show that buildings will be
9 “constructed and placed to blend into the terrain and landscape with park-like
10 greenbelts between the buildings” partly because Master Plan drawings are
11 contradictory and do not show a consistent development of the property?
- 12 f) Do not meet the requirements of RCW 36.70A.360 and Ordinance 01-0128-08,
13 Paragraphs 63(d), (u) and (v) as the Phasing Plan (Exhibit 4) shows the short
14 term accommodations and the primary destination resort recreational facility, the
15 golf course, coming in the second phase, after construction of the permanent
16 residential units in Phase 1?
- 17 g) Do not meet the requirements of RCW 36.70A.360(1) and (3), Ordinance 01-
18 0128-08, Paragraph 32 and JCC 18.15.123(2) because Exhibits 2 and 4 do not
19 specify which units will be “short-term visitor accommodations” as opposed to
20 permanent residential units and because the applicant fails to provide a sufficient
21 definition of “short-term visitor accommodations?”
- 22 h) Do not meet the criteria of RCW 36.70A.360(1), Ordinance 01-0128-08, and
23 Jefferson County Comprehensive Plan Land Use Policy 24.9 because the plans
24 are inadequate to allow a determination that the development will be a fully
25 integrated planned unit development and resort?
- 26 i) Do not meet the criteria of RCW 36.70A.360(1), Ordinance 01-0128-08,
27 Paragraph 32 and JCC 18.15.126(2) and (5) because even the incomplete,
28 contradictory development described in the Master Plans would not be a “self-
29 contained and fully integrated planned unit development?”
- 30 j) Do not meet the requirements of RCW 36.70A.360(1) and Ordinance 01-0128-08,
31 Paragraph 63(d) because the Master Plans and ordinances do not provide a “list
32 of required amenities...in the development agreement along with conditions for
public access...”?
- k) Do not meet the requirement of the Jefferson County Comprehensive Plan and

1 Ordinance 01-0128-08, Section 2, page 16 that the proposal contain a
2 “community center?”

3 **Applicable Laws:**

4
5 **RCW 36.70A.360 Master planned resorts.**

6 (1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master
7 planned resorts which may constitute urban growth outside of urban growth areas as limited
8 by this section. A master planned resort means a self-contained and fully integrated planned
9 unit development, in a setting of significant natural amenities, with primary focus on
10 destination resort facilities consisting of short-term visitor accommodations associated with
11 a range of developed on-site indoor or outdoor recreational facilities.

12 (2) Capital facilities, utilities, and services, including those related to sewer, water,
13 stormwater, security, fire suppression, and emergency medical, provided on-site shall be
14 limited to meeting the needs of the master planned resort. Such facilities, utilities, and
15 services may be provided to a master planned resort by outside service providers, including
16 municipalities and special purpose districts, provided that all costs associated with service
17 extensions and capacity increases directly attributable to the master planned resort are fully
18 borne by the resort. A master planned resort and service providers may enter into
19 agreements for shared capital facilities and utilities, provided that such facilities and utilities
20 serve only the master planned resort or urban growth areas.
21 Nothing in this subsection may be construed as: Establishing an order of priority for
22 processing applications for water right permits, for granting such permits, or for issuing
23 certificates of water right; altering or authorizing in any manner the alteration of the place of
24 use for a water right; or affecting or impairing in any manner whatsoever an existing water
25 right. All waters or the use of waters shall be regulated and controlled as provided in
26 chapters 90.03 and 90.44 RCW and not otherwise.

27 (3) A master planned resort may include other residential uses within its boundaries, but
28 only if the residential uses are integrated into and support the on-site recreational nature of
29 the resort.

30 (4) A master planned resort may be authorized by a county only if:

31 (a) The comprehensive plan specifically identifies policies to guide the development
32 of master planned resorts;

(b) The comprehensive plan and development regulations include restrictions that
preclude new urban or suburban land uses in the vicinity of the master planned
resort, except in areas otherwise designated for urban growth under RCW
36.70A.110;

- 1 (c) The county includes a finding as a part of the approval process that the land is
2 better suited, and has more long-term importance, for the master planned resort than
3 for the commercial harvesting of timber or agricultural production, if located on land
4 that otherwise would be designated as forestland or agricultural land under RCW
5 36.70A.170;
6 (d) The county ensures that the resort plan is consistent with the development
7 regulations established for critical areas; and
8 (e) On-site and off-site infrastructure and service impacts are fully considered and
9 mitigated.

10 **Board Discussion**

11 Sub-Issues 2(a), 2(b), 2(c) and 2(e) – Adequate Description of Destination Resort

12 The Board does not have jurisdiction over Sub-Issues 2(b), 2(c) and 2(e) because
13 those issue statements relate only to alleged noncompliance with the 30 conditions
14 applicable to development of the MPR included in Ordinance 01-0128-08, not with
15 compliance with RCW 36.70A.360. The Board dismisses arguments regarding Sub-Issues
16 2(b), 2(c) and 2(e). In this section, the Board focuses on Sub-Issue 2(a).

17 For Sub-Issue 2(a) Petitioner claimed the MPR maps are inconsistent or conflicting
18 and do not meet statutory and regulatory standards.⁴¹ Petitioner maintained the maps are
19 only line drawings, open space and landscaping are not shown, and building elevations and
20 designs are not shown with any detail.⁴² Petitioner argued RCW 36.70A.360 explicitly
21 requires that an MPR be a planned unit development (PUD) and complained Ordinance-03
22 did not mention PUDs at all, nor mention how a planned unit development might be
23 “integrated” or set out procedures for review of a “planned unit development.”⁴³ Lastly,
24 Petitioner claims that without detailed, specific plans and maps, they will not have an
25 opportunity to comment on the MPR’s compliance with MPR statutes or regulations.⁴⁴

26 Intervenor responded that the “Petitioner’s argument ignore[s] the entire regulatory
27
28

29 _____
30 ⁴¹ Petitioner’s Opening Brief (November 1, 2 018) at 8.

31 ⁴² *Id.* at 8-12 Petitioner references previous letters it sent to the County which describe the lack of site-specific
32 information about the MPR. Ex. 2018-080-000818 to 847.

⁴³ *Id.* at 9-10.

⁴⁴ *Id.* at 11.

1 regime for MPRs in the JCC” and points out that the entire regulatory scheme must be
2 applied to developing an MPR.⁴⁵ The County supported Intervenor’s arguments and
3 emphasizes that the MPR will be controlled by County development regulations including
4 mitigation requirements and restrictions/requirements from the 30 conditions in Ordinance
5 No. 01-0128-08⁴⁶ and be consistent with the Final Environmental Impact Statement (FEIS)
6 and Final Supplemental Environmental Impact Statement (FSEIS). Further, the County
7 pointed out these requirements include a “three-page list of amenities [which] has a detailed
8 discussion for the selected alternative of the location, size, intended use/function/service
9 and conditions for public access and makes clear that the list is required to satisfy
10 Ordinance No. 01-0158-08.”⁴⁷ The County stated the public will have opportunities to
11 comment on any changes not consistent with the FEIS.⁴⁸

12
13 Sub-Issue 2(a) claims the County’s MPR does not meet “requirements for an
14 adequate description of destination resort facilities found in RCW 36.70C.360 [sic]...”
15 Petitioner did not present argument showing how the County failed to meet requirements in
16 RCW 36.70A.360 regarding a “destination resort facility.” Instead, its legal arguments focus
17 narrowly on inconsistent maps and lack of integrated planned unit developments, but do not
18 refer to the County’s multiple planning documents, development regulations and
19 environmental requirements for the MPR that include concepts of a “destination resort.”⁴⁹
20 Nor does Petitioner fully quote from the County’s Ordinance-03 which specifically states the
21 MPR would be a “self-contained and fully integrated planned unit development”⁵⁰ [emphasis
22 added].
23
24

25 Ordinance-03 applies a holistic regulatory scheme that uses existing County
26
27

28 ⁴⁵ Intervenor’s Brief (November 26, 2018) at 18.

29 ⁴⁶ The 30 conditions are set out in Appendix C attached.

30 ⁴⁷ County Brief (November 26, 2018) at 8; See Tab 4, Ex. 2015-131-00961, Pleasant Harbor FEIS Volume 3-
Appendices Excerpts at 958-961.

31 ⁴⁸ *Id.* at 8.

32 ⁴⁹ County Response Brief at Tab 9 Ordinance 03-0604-18 at Log 2018-105-00001.

⁵⁰ *Id.* at Log 2018-105 – 00001.

1 development regulations to designate, condition and control development of an MPR.⁵¹
2 First, Ordinance-03 incorporates numerous requirements with which the MPR must comply,
3 including the Master Planned Resort regulations in Title 17, the Unified Development Code
4 in Title 18, the 30 conditions included in Ordinance 01-0128-08, as well as the internal
5 zoning map, and mitigation measures included in the December 9, 2015, Final
6 Supplemental Environmental Impact Statement.⁵²
7

8 Second, Ordinance-03 specifically amended County Code Title 18 to add the
9 Pleasant Harbor MPR to JCC 18.15.025 Master Planned Resorts. Title 18 defines MPRs by
10 using definitions and requirements from RCW 36.70A.360. The County's code and this
11 statute are the same: "a self-contained and fully integrated planned unit development, in a
12 setting of significant natural amenities, with primary focus on destination resort facilities
13 consisting of short-term visitor accommodations associated with a range of developed on-
14 site indoor or outdoor recreational facilities." See Title 18.15.025.⁵³ Petitioner's did not
15 present argument that establishes this is not a destination resort and did not provide
16 evidence that the County's actions violate RCW 36.70A.360. **The Board finds and
17 concludes Petitioner has not carried its burden of proof demonstrating the County
18 failed to meet requirements in RCW 36.70A.360 regarding claims about an "adequate
19
20**

21 _____
22 ⁵¹ County Response Brief at 8 and NOTE: The Brinnon MPR must meet all requirements in JCC 18.15. 135
23 which includes phased in construction that must stand alone (See JCC 18.15. 135(3)) and contain all
24 supportive accessory services to serve the MPR (See JCC 18.15.135(5)).

25 <https://www.codepublishing.com/WA/JeffersonCounty/>.

26 ⁵² *Id.* at Log 2018-105 – 00002. Ordinance 03-0604-18. See 9th, 10th and 11th WHEREAS... includes
27 references to Ordinance 01-0128-08, the 30 conditions in that Ordinance, plus requirements in the County's
28 FSEIS. Attachments 1 and 2 to Ordinance-03 apply to the Brinnon MPR and are: Amended Title 17 and
29 Amended Title 18 Unified Development Code. As amended Title 17 requires compliance with County codes in
30 Title 15, 17 and 18 plus the 30 conditions established in Ordinance 01-0128-08, and mitigation measures from
31 the FSEIS. See Sections 1-4 at page 4 of Ordinance 03-0604-18.

32 ⁵³ *Id.* at Tab 9 Attachment 2 Log 2018-105-00019 JCC 18.15.025 Master Planned Resort "Per RCW
36.70A.360, a new master planned resort means a self-contained and fully integrated development with
primary focus on resort destination facilities that includes short-term visitor accommodations associated with a
range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant
natural amenities. A resort may include other residential uses, but only if the residential uses are integrated
into and support the on-site recreational nature of the resort."

<https://www.codepublishing.com/WA/JeffersonCounty/>.

1 **description of a destination resort” under Sub-issue 2(a).**

2
3 Sub-Issues 2(d),⁵⁴ 2(f) and 2(g) -- Short Term vs. Long Term Visitor Accommodations

4 Petitioner argued that the MPR development regulations “do not demonstrate that the
5 “primary focus” of the Pleasant Harbor MPR is short term visitor accommodations instead of
6 residential development.”⁵⁵ It claimed RCW 36.70A.360(1) requires an MPR to be a
7 “...resort, not just another set of condominiums or single family housing in a pretty spot.”⁵⁶
8 Petitioner’s main concern was that the “early stages of development will include residential
9 uses that will be sold to private owners, but later stages (which include the bulk of the
10 STVAs) [short term visitor accommodations] will not be built, with no mechanism in any of
11 the approved development documents to compel their construction.”⁵⁷ Petitioner believes
12 the Board should deny the MPR “absent clear delineation on either master plan maps or the
13 text of a development agreement as to which units will be residential and which will be
14 STVA, as well as when they will be built.” [emphasis added]

15
16 Intervenor responds that the claim is a “strained interpretation of the MPR Zoning
17 Regulations and Development Agreement.”⁵⁸ It argues the zoning regulations require “not
18 less than 65 percent of the total units” to be STVA and the distinction between residential
19 uses and STVA is based on the length of time (30 days or less) and these criteria must be
20
21
22

23 ⁵⁴ Issue 2(d) includes an alleged violation of WAC 365-196-460(2). That rule is a “procedural guideline.” See
24 WAC 365-196-030 (3) How the growth management hearings board use these guidelines. The growth
25 management hearings board must determine, in cases brought before them, whether comprehensive plans or
26 development regulations are in compliance with the goals and requirements of the act. When doing so, the
27 Board must consider the procedural criteria contained in this chapter, but determination of compliance must be
28 based on the act itself.

29 ⁵⁵ Petitioner’s Opening Brief at 12.

30 ⁵⁶ *Id.* at 12 - 13 Under the statute, “residential units” are allowed “only if the residential uses are integrated into
31 and support the on-site recreational nature of the development.” RCW 36.70A.360(3). No indication is
32 provided as to how this integration is to be accomplished in the Master Plan, Development Regulations or the
Development Agreement. Nor does the Master Plan describe the short term visitor accommodations or
permanent residences. For example, are “time shares” or “fractionally owned accommodations” considered
STVAs or residential units? See Ex. 2018-105-00008.

⁵⁷ *Id.* at 13, 14.

⁵⁸ Intervenor’s Response at 19.

1 applied at the time of development.⁵⁹

2 The Board reviewed Sub-Issues 2(d), 2(f) and 2(g) in light of requirements in the
3 GMA. These three Sub-Issues address short-term visitor accommodations. RCW
4 36.70A.360 does not define an exact percentage requirement for “primary” nor “short-term
5 visitor accommodations”. The GMA simply states:

6 (1) Counties that are required or choose to plan under RCW 36.70A.040 may
7 permit master planned resorts which may constitute urban growth outside of
8 urban growth areas as limited by this section. A master planned resort means
9 a self-contained and fully integrated planned unit development, in a setting of
10 significant natural amenities, with primary focus on destination resort facilities
11 consisting of short-term visitor accommodations associated with a range of
12 developed on-site indoor or outdoor recreational facilities. [emphasis added]

13 Here the County defines STVAs as an allowable use within MPRs in JCC 18.15.123:⁶⁰

14 (2) Short-term visitor accommodations, including, but not limited to, hotels,
15 motels, lodges, and other residential uses, that are made available for short-
16 term rental; provided, that short-term visitor accommodations shall constitute
17 no less than 65 percent of the total resort accommodation units. [emphasis
18 added]

19 The Board does not find Petitioner’s arguments compelling that the County MPR
20 regulations do not demonstrate a “primary focus” on STVAs. Petitioner cites no GMA
21 definitions of the term “primary focus.” The Board views that requiring 65% use by STVA is
22 over 50% of total accommodations and that constitutes a primary focus of the MPR. The
23 GMA does not address when this percentage is applied or to which types of units, rather it
24 simply states the “primary focus” of a destination resort facility should be on STVAs. **The
25 Board finds and concludes Petitioner has not carried its burden of proof
26 demonstrating the County failed to meet requirements in RCW 36.70A.360 under Sub-
27 Issues 2(d), 2(f) and 2(g).**
28
29
30

31 ⁵⁹ *Id.*

32 ⁶⁰ County Response Brief at Tab 9 Attachment 2 Log 2018-105-00020.

1 Sub-issues 2(h) and 2(i) -- Fully Integrated and Self-Contained MPR

2 Petitioner argued RCW 36.70A.360 contains an explicit requirement that an MPR be
3 self-contained and claimed the County's MPR does not demonstrate it will be a "self-
4 contained and fully integrated development."⁶¹ Petitioner pointed out that JCC 18.15.126(5)
5 embodies the definition of self-contained,⁶² but that the MPR does not meet these
6 requirements because the phasing plan does not require sufficient services to be
7 constructed to serve MPR visitors.⁶³

9 The County responded that the Board's jurisdiction as specified in RCW 36.70A.280
10 and RCW 36.70A.290 does not extend to whether a County complies with its own codes,
11 rather the Board can only rule on whether a comprehensive plan or development regulation
12 meets requirements in the GMA.⁶⁴ The County explained its FSEIS has a detailed list of
13 requirements for "location, size, intended use/function/service and conditions for public
14 access and makes clear that the list is required to satisfy Ordinance No. 01-0158-08".⁶⁵

16 Intervenor agreed with the County and explained the GMA "...requires that cities and
17 counties adopt regulations that insure future development applications for MPRs are self-
18 contained and fully integrated and allow for development similar to that of a planned unit
19 development."⁶⁶ According to Intervenor, the County's codes⁶⁷ and the FEIS and FSEIS
20 provide adequate guidance for a phased-in MPR application and development process.
21

22 _____
23 ⁶¹ Petitioner's Opening Brief at 14.

24 ⁶² *Id.* See also **JCC 18.15.126 Requirements for master planned resorts.** (5) Self-Contained Development.
25 All necessary supportive and accessory on-site urban-level commercial and other services should be
26 contained within the boundaries of the MPR, and such services shall be oriented to serve the MPR. New urban
27 or suburban development and land uses are prohibited outside the boundaries of a master planned resort,
28 except in areas otherwise designated as urban growth areas in compliance with RCW 36.70A.110. [Ord. 3-18
29 § 3 (Att. 2); Ord. 8-06 § 1].

30 ⁶³ *Id.* at 16 "The Development Regulations permit "on-site retail services and businesses typically found in
31 destination resorts and designed to serve the convenience needs of users and employees of the master
32 planned resort," but do not require them. See Ex. 2018-105-00008 (JCC 17.65.020(2)(c))."

⁶⁴ County Response Brief (November 26, 2018) at 4.

⁶⁵ *Id.* at 8.

⁶⁶ *Id.* at 19.

⁶⁷ *Id.* **JCC 17.60.040 Master Plan** and **JCC 18.15.135 Criteria for approval.** An application to develop any
parcel or parcels of land as an MPR may be approved, or approved with modifications, if it meets all of the
criteria below. If no reasonable conditions or modifications can be imposed to ensure that the application

1 The Board reviewed these Sub-Issues in light of RCW 36.70A.360(1) which defines
2 an MPR as:

3 A master planned resort means a self-contained and fully integrated planned
4 unit development, in a setting of significant natural amenities, with primary
5 focus on destination resort facilities consisting of short-term visitor
6 accommodations associated with a range of developed on-site indoor or
7 outdoor recreational facilities. [emphasis added]

8 The Board also reviewed County Codes for the Brinnon MPR which require the following:

9 **17.60.040 Master plan.**

10 For the purposes of this division, the master plan for future development of the
11 Pleasant Harbor MPR consists of: the regulations set forth in this division,
12 along with: the conditions and requirements of Ordinance 01-0128-08; the
13 conditions and requirements published in two environmental impact
14 statements, the November 27, 2007, Final Environmental Impact Statement for
15 the Brinnon (also referred to as the Pleasant Harbor Marina and Golf Resort)
16 Master Planned Resort, and the December 2015 Pleasant Harbor Final
17 Supplemental Impact Statement, including maps, mitigation measures,
18 phasing plan; and any development agreement between Jefferson County and
19 the developer. [emphasis added]

20 **18.15.135 Criteria for approval.**

21 An application to develop any parcel or parcels of land as an MPR may be
22 approved, or approved with modifications, if it meets all of the criteria below. If
23 no reasonable conditions or modifications can be imposed to ensure that the
24 application meets these criteria, then the application shall be denied.

25 ...

26 (3) If an MPR will be phased, each phase contains adequate infrastructure,
27 open space, recreational facilities, landscaping and all other conditions of the
28 MPR sufficient to stand alone if no subsequent phases are developed.

29 ...

30 (5) The MPR will contain within the development all necessary supportive and
31 accessory on-site urban-level commercial and other services, and such
32 services shall be oriented to serve the MPR.

...

(7) All on-site and off-site infrastructure and service impacts have been fully
considered and mitigated.

meets these criteria, then the application shall be denied.

1 The County required the Brinnon MPR to meet all criteria in JCC 18.15.135⁶⁸ including
2 criteria requiring that "...if an MPR will be phased, each phase contains adequate
3 infrastructure...to stand alone if no subsequent phases are developed" and also that the
4 MPR will contain "urban-level commercial and other services, and such services shall be
5 oriented to serve the MPR."⁶⁹ The GMA does not specify when these services are to be
6 provided, but JCC 18.15.135 criteria require adequate infrastructure and "other conditions of
7 the MPR sufficient to stand alone if no subsequent phases are developed." [emphasis
8 added] The Board sees that these criteria and requirements will ensure that the
9 development's phased-in approach will result in a self-sufficient and integrated project. As
10 previously stated, the terms of the DA are also relevant in addressing compliance with the
11 requirements of RCW 36.70A.360. The DA, as a contract between the County and the
12 Intervenor, incorporates all of the conditions placed on the MPR, including the 30
13 "conditions" from Ordinance 01-0128-08, the numerous mitigation requirements from the
14 Environmental Impact Statement (EIS) documents, and, specifically, requirements regarding
15 phasing of development.⁷⁰ **The Board finds and concludes Petitioner has not carried its**
16 **burden of proof demonstrating the County failed to meet requirements in RCW**
17 **36.70A.360 under Sub-issues 2(h) and 2(i).**
18
19
20

21 **Issue No. 3**

22 Do the development regulations found in Ordinance 03-0604-18 provide (a) meaningful
23 regulation of the MPR as required by RCW 36.70A.360(1), Ordinance 01-0128-08,
24 Paragraph 33, and JCC 18.40.840(1), and (b) an "internal zoning map and internal zoning
25 code" (*Id.*, Ordinance 01-0128-08) when the adopted provisions for the MPR-GR zone (in
26 Chapter 17.65) lack meaningful restrictions on uses, setbacks, design and height within the
27 MPR area sufficient to be a planned unit development? [emphasis added]

28 ⁶⁸ County Response Brief (November 26, 2018) Tab 9, Ordinance 03-0604-18, Log 2018-105 – 00004 and see
29 *also* Attachment 2 Title 18 Log 2018-105 – 00024.

30 ⁶⁹ *Id.* at # (3) If an MPR will be phased, each phase contains adequate infrastructure, open space, recreational
31 facilities, landscaping and all other conditions of the MPR sufficient to stand alone if no subsequent phases are
32 developed. (5) The MPR will contain within the development all necessary supportive and accessory on-site
urban-level commercial and other services, and such services shall be oriented to serve the MPR.

⁷⁰ County Response Brief (November 26, 2018) Tab 8 at 2018-104 - 00016-18.

1 **Applicable Law:**

2 RCW 36.70A.360 Master planned resorts.

3 (1) Counties that are required or choose to plan under RCW 36.70A.040 may
4 permit master planned resorts which may constitute urban growth outside of
5 urban growth areas as limited by this section. A master planned resort means
6 a self-contained and fully integrated planned unit development, in a setting of
7 significant natural amenities, with primary focus on destination resort facilities
8 consisting of short-term visitor accommodations associated with a range of
developed on-site indoor or outdoor recreational facilities.

9 **Board Discussion**

10 Petitioner argued Ordinance-03 is “insufficient to assure meeting the minimum
11 requirements for an MPR.” Petitioner claimed that amendments to Title 17 do not meet
12 requirements in RCW 36.70A.360 because:

13
14 Development regulations and requirements that MPRs under GMA be
15 “integrated planned unit developments” contemplate clear regulations, not a
smorgasbord spread of uses and options for a developer to choose from.
16 When the MPR Master Plan is complete, local residents should know what is
17 planned and be able to determine if future site-specific proposals are
18 consistent with the approved plan.⁷¹

19 Intervenor responded that Petitioner restates arguments from other sections and
20 “renews the common theme running through all arguments that the GMA requires a
21 “definitive plan.” Intervenor explains those “arguments are addressed in other sections and
22 are not repeated here.” Lastly, Intervenor states that Petitioner complains about the MPR
23 zoning regulations “but without specifying what those statutory requirements are.”⁷²

24
25 The Board could not decipher Petitioner’s legal argument describing clearly how the
26 County violates RCW 36.70A.360 under Issue 3. Petitioner repeated earlier claims from
27 Issue 2 but did not specify violations of GMA. **The Board finds and concludes Petitioner
28 has not carried its burden of proof demonstrating the County failed to meet
29 requirements in RCW 36.70A.360 under Issue 3.**
30

31 ⁷¹ Petitioner’s Opening Brief at 19.

32 ⁷² Intervenor Response Brief at 20-21.

1 **Issue No. 4**

2 Does the approval meet the requirements of RCW 36.70A.360(1), JCC 18.15.126(1)(I) and
3 JCC 18.15.135 when it fails to contain conditions or standards for the project to stand alone
4 as a MPR if development ceases before all phases are complete?

5 **Applicable Laws:**

6 RCW 36.70A.360 Master planned resorts.

7 (1) Counties that are required or choose to plan under RCW 36.70A.040 may
8 permit master planned resorts which may constitute urban growth outside of
9 urban growth areas as limited by this section. A master planned resort means
10 a self-contained and fully integrated planned unit development, in a setting of
11 significant natural amenities, with primary focus on destination resort facilities
12 consisting of short-term visitor accommodations associated with a range of
developed on-site indoor or outdoor recreational facilities.

13 **Board Discussion**

14 Petitioner argued that RCW 36.70A.360 contains requirements for an MPR to be a
15 self-contained, fully integrated planned unit development with a primary focus on destination
16 resort facilities, including short term visitor accommodations and associated with a range of
17 developed on-site indoor or outdoor recreational facilities. Petitioner argued these goals will
18 not be met “if development ceases before all phases are complete.”⁷³ It complained “nothing
19 in the Master Plan, Development Agreement or Development Regulations explains how the
20 various commitments of the Pleasant Harbor MPR, including the required elements of RCW
21 36.70A.360(1), will be met if the development stops after the first phase.”⁷⁴ Petitioner then
22 describes various scenarios from around the country in which local governments permitted
23 large developments or resorts, but no mechanism was available to force construction.
24 Petitioner asks the Board to deny the MPR “until there is a definitive showing as to how the
25 Pleasant Harbor MPR will achieve compliance with the GMA and local regulations if
26 development ceases in early stages of the project.”⁷⁵ Intervenor responds by clarifying that
27
28
29

30 _____
31 ⁷³ Petitioner’s Opening Brief at 20.

32 ⁷⁴ *Id.* at 21.

⁷⁵ *Id.* at 22.

1 each phase of the MPR development must be self-sufficient and County development
2 regulations give it authority to require future applications to meet GMA requirements.

3 Petitioner did not provide sufficient legal arguments to make its case that somehow
4 the GMA was violated. The Board does not have jurisdiction over questions of what occurs if
5 phases of a project are not complete. The Board can only look to RCW 36.70A.360(1) for
6 the definition of an MPR and it does not speak to incomplete phasing nor what a county
7 could do if a project is not completed. However, even if that were not the case, the DA does
8 address phasing. That agreement specifically incorporates the requirements of JCC
9 18.15.135 which mandates that each phase contain sufficient infrastructure, open space,
10 recreational facilities, and landscaping “to stand alone if no subsequent phases are
11 developed”.⁷⁶ **The Board finds and concludes Petitioner has not carried its burden of
12 proof demonstrating the County failed to meet requirements in RCW 36.70A.360
13 under Issue 4.**

16 **Issue No. 5**

17 Does the approval meet the requirements of RCW 36.70A.360(1), JCC 18.15.126(1)(I) and
18 JCC 18.15.135 when there is no demonstration that the developer has sufficient experience
19 and financial backing to manage the proposed large-scale and long term venture?

20 **Applicable Laws:**

21 RCW 36.70A.360 Master planned resorts.

22 (1) Counties that are required or choose to plan under RCW 36.70A.040 may
23 permit master planned resorts which may constitute urban growth outside of
24 urban growth areas as limited by this section. A master planned resort means
25 a self-contained and fully integrated planned unit development, in a setting of
26 significant natural amenities, with primary focus on destination resort facilities
27 consisting of short-term visitor accommodations associated with a range of
28 developed on-site indoor or outdoor recreational facilities.

29 **Board Discussion**

30 Petitioner expressed concerns that the County is proceeding with an MPR without a
31

32 ⁷⁶ Petitioner’s Opening Brief, Tab 2018-121-1-53 at 13.

1 showing of Intervenor’s managerial experience or financial capability to develop and
2 maintain an MPR.⁷⁷ Intervenor explained that financial capacity is not a requirement in the
3 GMA and argued Petitioner points to no authority in the GMA imposing such a
4 requirement.⁷⁸

5 The GMA does not impose any requirement on local jurisdictions to assess the
6 financial capacity or managerial experience of MPR proponents. **The Board finds and**
7 **concludes Petitioner has not carried its burden of proof demonstrating the County**
8 **failed to meet requirements in RCW 36.70A.360 under Issue 5.**
9

10
11 **VI. ORDER**

12 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
13 parties, the GMA, prior Board orders and case law, having considered the arguments of the
14 parties, and having deliberated on the matter, the Board finds Petitioner has not carried its
15 burden of proof demonstrating the County failed to meet requirements in RCW 36.70A.360.
16 **This case is closed.**
17

18 SO ORDERED this 30th day of January 2019.
19
20

21 _____
Nina Carter, Board Member

22
23
24 _____
William Roehl, Board Member
25
26
27
28
29
30

31 _____
⁷⁷ Petitioner’s Opening Brief at 26.

32 ⁷⁸ Intervenor’s Response Brief at 23.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Dissent by Raymond L. Paoella, Board Member

I respectfully dissent. The majority is granting a motion to dismiss key evidence of master plan approval that is highly relevant and material to the action under review, and this excluded evidence bears directly on the central question in this case: *Whether Jefferson County's June 4, 2018, action to authorize the 238-acre Pleasant Harbor Marina and Golf Master Planned Resort complies with GMA requirements in RCW 36.70A.360?*

RCW 36.70A.280(1) confers jurisdiction on the Growth Management Hearings Board (GMHB) to hear and determine whether a county is in compliance with the requirements of the GMA. The Supreme Court has held that review of comprehensive plans and development regulations for **compliance with the GMA** is a matter within the exclusive jurisdiction of the Growth Management Hearings Board, whereas superior courts do **not** have jurisdiction to decide whether a site-specific land use decision **complies with the GMA**.

In the present case, Petitioners appealed two Jefferson County ordinances, seeking GMHB review for compliance with the GMA. In order to approve a Master Plan Resort in Jefferson County, the County Commissioners must take action to approve three things: (1) Comprehensive Plan Land Use Map Amendment, (2) Development Agreement and (3) Master Plan. The majority decision to dismiss any consideration of the Development Agreement and integral Master Plan approval in effect precludes meaningful review of whether this Master Planned Resort complies with the GMA requirements in RCW 36.70A.360.

This case raises complex jurisdictional issues relating to the division of land use review authority between the GMHB (RCW Chap. 36.70A) and Superior Court (RCW Chap. 36.70C) that can only be resolved by an appellate court. Case law suggests the possibility that severable portions of a Development Agreement relating to **State GMA** compliance might fall under GMHB review while other portions related to compliance with **county codes/regulations** might fall under county Superior Court review.

1 I would deny the motion to dismiss the Development Agreement/Master Plan, and I
2 would find noncompliance with RCW 36.70A.360, as more fully explained below:

3 **MOTION TO DISMISS - ANALYSIS**

4 Intervenor Pleasant Harbor Marina and Golf Resort, LLP and Jefferson County
5 moved to dismiss the following:

- 6
- 7 (1) The appeal of Ordinance No. 04-0604-18, authorizing execution of a
8 Development Agreement, which already is the subject of an appeal by the
9 Petitioners in Kitsap Superior Court under the Land Use Petition Act (“LUPA”);
 - 10 (2) All issues alleging compliance or lack thereof with the Jefferson County Code;
11 and
 - 12 (3) All issues alleging compliance with the 30 conditions imposed by Ordinance No.
13 01—0128-08.

14 The Growth Management Hearings Board is a creature of the Legislature and as a
15 quasi-judicial tribunal, the GMHB’s powers are restricted to a review of those matters
16 specifically delegated by statute.⁷⁹ RCW 36.70A.280(1) provides that the GMHB “shall hear
17 and determine” petitions alleging that a county is not in compliance with the requirements of
18 the GMA. Reading RCW 36.70A.280(1) together with RCW 36.70A.360, the GMHB has
19 jurisdiction to review Master Planned Resort (MPR) approvals for compliance with GMA
20 requirements.

21 To invoke the Board’s jurisdiction to review compliance with the GMA, a party with
22 standing must comply with the following GMA procedural requirements:

- 23 a) file a petition for review that includes a detailed statement of issues presented for
24 resolution by the Board;⁸⁰
- 25 b) within 60 days after publication of the county’s GMA action, file a petition for
26 review relating to whether or not an adopted comprehensive plan, development
27 regulation, or permanent amendment thereto, is in compliance with the goals and
28 requirements of the GMA;⁸¹ and

29 _____
30 ⁷⁹ *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 129 (2005); *Skagit Surveyors & Eng'rs, LLC v. Friends of*
Skagit County, 135 Wn.2d 542, 558 (1998).

31 ⁸⁰ RCW 36.70A.290(1).

32 ⁸¹ RCW 36.70A.290(2). In addition to the GMA, the Board also has jurisdiction to hear and determine certain
petitions alleging noncompliance with the Shoreline Management Act and the State Environmental Policy Act.

1 c) allege that the government agency is not in compliance with the requirements of
2 the GMA.⁸²

3 In the present case, Petitioner challenges two Jefferson County Ordinances
4 denominated as Ordinance No. 03-0604-18 and Ordinance No. 04-0604-18. These two
5 ordinances were sequentially approved and adopted on the same day, June 4, 2018, and
6 they both took effect on June 4, 2018. Petitioner filed their Petition for Review (PFR) within
7 60 days of the County's June 4, 2018, ordinance adoptions, which PFR relates to whether
8 or not an adopted comprehensive plan, development regulation, or permanent amendment
9 thereto, is in compliance with the goals and requirements of the GMA. Petitioner's PFR
10 presented five legal issues for review and decision by the Board, each of which alleged
11 noncompliance with the GMA requirements for authorizing a Master Planned Resort (MPR)
12 under RCW 36.70A.360. Having satisfied the GMA's procedural requirements, Petitioner's
13 PFR successfully invoked the Board's jurisdiction to review compliance with the GMA.
14

15 The majority interprets and applies non-GMA law -- RCW 36.70C.020 -- to decide
16 whether the GMHB has jurisdiction, asserting that because a development agreement is a
17 site-specific land use decision under the Land Use Petition Act⁸³ (LUPA), then it falls outside
18 of GMHB jurisdiction (accepting the County's and Intervenor's argument that it falls under
19 superior court LUPA jurisdiction).⁸⁴ But this assertion lacks merit because it is axiomatic that
20 to determine the GMHB's jurisdiction to review GMA actions, the GMHB can only interpret
21 and apply the GMA to the facts in the case -- the GMHB lacks statutory authority to interpret
22 and apply non-GMA statutes (such as LUPA) to determine GMHB review authority. Also,
23 our Supreme Court has ruled that superior courts have subject matter jurisdiction to review
24 land use decisions under LUPA "only for violations of the comprehensive plan and/or
25 development regulations, not violations of the GMA."⁸⁵
26
27
28

29 _____
30 ⁸² RCW 36.70A.280(1)(a).

31 ⁸³ RCW Chapter 36.70C.

32 ⁸⁴ The term "Development Agreement" is not defined as being a site-specific rezone, nor a subdivision approval, nor a building permit, and is not referenced as a project permit, as defined in RCW 36.70B.020.

⁸⁵ *Woods v. Kittitas County, et al.*, 162 Wn.2d 597, 603 and 615-616 (2007).

1 Jefferson County has a three-step MPR approval process -- the County
2 Commissioners must take action to approve three things: (Step 1) Comprehensive Plan
3 Land Use Map Amendment, (Step 2) Development Agreement, and (Step 3) Master Plan.⁸⁶
4 The map amendment and legal description⁸⁷ was adopted in 2008 as Step 1. However, the
5 MPR details (e.g., “list of required amenities”) and Master Plan are adopted later as part of
6 the Development Agreement.⁸⁸ But it took 10 years before the County formally approved the
7 MPR Development Agreement/Master Plan⁸⁹ in 2018 with major changes to the MPR
8 boundaries and resort facilities as compared to the boundaries and facilities shown in the
9 2007 MPR concept that supported the 2008 map amendment.⁹⁰

11 Furthermore, the Board has jurisdiction to review amendments to development
12 regulations, both *de jure* and *de facto*. The Court of Appeals has held that the GMHB has
13 jurisdiction to review contractual agreements that have the legal effect of amending
14 comprehensive plans or development regulations because they are *de facto* amendments.⁹¹
15 The Court of Appeals has also said that a challenge to the process by which portions of a
16 Development Agreement become amendments to the comprehensive plan or development
17 regulations would fall within GMHB jurisdiction.⁹²

19 Under RCW 36.70A.030(7), development regulation means “controls placed on
20 development or land use activities by a county...” Ordinance 03-0604-18 adopted land use
21 controls that regulate development within the MPR, and Jefferson County Code § 17.60.060
22 requires that:

24 Any regulated land use or development activity within the Pleasant Harbor MPR
25 must also comply with the applicable development standards and requirements of...
26 any development agreement entered into between Jefferson County and the
27 developer. Where conflicts occur between the provisions of this division and ...

28 ⁸⁶ JCC 18.15.126-.132.

29 ⁸⁷ Jefferson County Ordinance 01-0128-08 (Jan. 28, 2008).

30 ⁸⁸ *Id.* Log 2008-003-00011.

31 ⁸⁹ Jefferson County Ordinance 04-0604-18 (June 4, 2018).

32 ⁹⁰ Ex. 2015-131-00958 to -00961.

⁹¹ *Alexanderson v. Bd. Of Clark County Comm'rs.*, 135 Wn. App. 541, 550, 144 P.3d 121 (2006).

⁹² *City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 375 (2002).

1 applicable provisions of a development agreement between Jefferson County and
2 the developer, the more restrictive shall apply.

3 Controls placed on development or land use activities by the Development
4 Agreement/Master Plan will have the legal effect of regulating MPR land uses if more
5 restrictive than JCC Chapter 17.60.⁹³ In addition, portions of the Development Agreement
6 have the legal effect of regulating land use and actually became amendments to
7 development regulations. For example, the residential development cap of 890 units and
8 commercial/retail cap of 56,608 square feet established on page 5 of the Development
9 Agreement became amendments enacted in JCC 17.60.070.
10

11 Therefore, the Development Agreement adopted by Ordinance 04-0604-18
12 constitutes a *de facto* component of the County's development regulations.⁹⁴
13

14 **MOTION TO DISMISS - CONCLUSION**

15 Ordinances 03-0604-18 and 04-0604-18 are intertwined actions that function
16 together to authorize and regulate land uses in the Pleasant Harbor Marina and Golf Master
17 Planned Resort. Pursuant to RCW 36.70A.280(1) and RCW 36.70A.360, the GMHB has
18 jurisdiction to review the MPR Development Agreement and integral Master Plan for
19 compliance with the GMA's requirements.
20

21 The majority's decision to dismiss Ordinance No. 04-0604-18 because of the title
22 "Development Agreement," without considering the actual legal effects on the MPR, may
23 leave an impression that MPRs (or similar urban growth intrusions into rural areas) can
24 evade GMHB review simply by labeling GMA approval actions as a contract rather than as a
25 regulation. This outcome could mean that neither the GMHB nor superior court could review
26 MPRs for compliance with the GMA.
27

28 _____
29 ⁹³ See various development standards approved by Ordinance No. 04-0604-18 Development Agreement, pp.
30 10-15.

31 ⁹⁴ However, to the extent that Ordinance No. 04-0604-18 contains elements relating to compliance with (a)
32 Jefferson County codes distinct from the GMA, and/or (b) land use conditions adopted by the County in 2008,
then those portions of the Development Agreement approved by Ordinance No. 04-0604-18 fall outside of
Board's statutory review authority.

1 I would deny the motion to dismiss the appeal of Ordinance No. 04-0604-18.

2
3 **COMPLIANCE WITH RCW 36.70A.360 - ANALYSIS**

4 A fundamental and central policy of the GMA is to concentrate urban growth in Urban
5 Growth Areas for two key reasons: First, by minimizing the area devoted to development,
6 land with environmentally critical qualities, and commercially valuable natural resources can
7 be protected and preserved. Second, by concentrating development in contiguous areas,
8 public facilities may be provided more efficiently, and with less environmental harm.⁹⁵

9
10 A Master Planned Resort (MPR) that is “permitted” and “authorized” by a county
11 under RCW 36.70A.360 constitutes a limited exception to the fundamental GMA policy
12 prohibiting urban growth outside of designated Urban Growth Areas and as such can only
13 be authorized when a county complies with the 13 enumerated MPR requirements
14 prescribed by RCW 36.70A.360:

- 15 1. self-contained,
- 16 2. fully integrated planned unit development,
- 17 3. in a setting of significant natural amenities,
- 18 4. primary focus on destination resort facilities,
- 19 5. consisting of short-term visitor accommodations,
- 20 6. associated with a range of developed on-site indoor or outdoor recreational
- 21 facilities,
- 22 7. other residential uses are integrated into and support the on-site recreational
- 23 nature of the resort,
- 24 8. capital facilities (including water, sewer, and stormwater) provided on-site shall
- 25 be limited to meeting the needs of the master planned resort,
- 26 9. comprehensive plan specifically identifies policies to guide the development of
- 27 master planned resorts,
- 28
- 29
- 30

31 ⁹⁵ RCW 36.70A.110; R. Settle & C. Gavigan, *The Growth Management Revolution in Washington: Past,*
32 *Present, and Future*, 16 U. of Puget Sound L. Rev. 867, 873 (1993).

- 1 10. restrictions that preclude new urban or suburban land uses in the vicinity of the
- 2 master planned resort,
- 3 11. county includes a finding as a part of the approval process that the land is better
- 4 suited, and has more long-term importance, for the master planned resort than
- 5 for the commercial harvesting of timber or agricultural production, if located on
- 6 land that otherwise would be designated as forestland or agricultural land,
- 7 12. county ensures that the resort plan is consistent with the development
- 8 regulations established for critical areas, and
- 9 13. On-site and off-site infrastructure and service impacts are fully considered and
- 10 mitigated.

11 Since Jefferson County amended its land use map in 2008 to designate the MPR
12 boundaries, there have been major changes to the MPR boundaries, facilities, and resort
13 amenities as compared to the boundaries and amenities shown in the 2007 MPR concept
14 that supported the 2008 map amendment. “Amenities” are defined “as those things that
15 would attract visitors and enhance the experience of the resort.”⁹⁶ These significant MPR
16 changes were made because of environmental and cultural resource concerns, including
17 concerns of the Port Gamble S’Klallam Tribe about treaty rights to usual and accustomed
18 hunting and fishing resources and the Tribe’s pending application for National Historic
19 Listing of kettles on the property as significant Traditional Cultural Resources.⁹⁷

20
21 First and foremost among the 2018 MPR changes is removal of the Pleasant Harbor
22 Marina from the Pleasant Harbor MPR originally proposed in 2008.⁹⁸ It is clear that the
23 Pleasant Harbor Marina (previously an amenity to attract MPR visitors) was removed from
24 the MPR because of Shoreline Master Program buffer requirements.⁹⁹ But there are
25 significant discrepancies in the County’s records – the Development Agreement legal
26 description includes the Marina and even the title of the Development Agreement includes
27 the Marina.
28

29
30 ⁹⁶ Ex. 2015-131-00961.

31 ⁹⁷ Ordinance No. 04-0604-18, Development Agreement p. 3.

32 ⁹⁸ Master Plan Map and Site Plan, Development Agreement Exhibit 2, 2018-121-00049.

⁹⁹ Staff Report, Apr. 9, 2018; Log 2018-065-00009.

1 A second major change is downgrading the Championship 18-hole Golf Course
2 "Links Design" to a much smaller 9-hole course.¹⁰⁰ Thirdly, the 200 seat community center
3 was removed. MPR acreage was reduced from 256 to 238. Recently added to the MPR is a
4 Maritime Village Building with 66 residential units and 21,000 square feet of commercial
5 space connected to and supporting the Marina which has been removed from the MPR.¹⁰¹
6 The Maritime Village also supports the Yacht Club and provides parking for slip owners.¹⁰²
7

8 Despite these major changes to the MPR intent, purposes, and amenities, the record
9 does not contain any ordinance findings of fact as to compliance with GMA requirements in
10 RCW 36.70A.360. Rather, the 2018 ordinances approving the MPR simply incorporate the
11 findings and conclusions from 2008 pertaining to a substantially different MPR concept.

12 Prior Board decisions have considered and interpreted MPR Requirement 1 to be
13 "self-contained." In *Whidbey Environmental Action Network v. Island Cty*, the Western Board
14 stated:
15

16 However, we are not convinced that Camp Casey meets the definition of "self-
17 contained" in RCW 36.70A.360. While visitors to Camp Casey can eat, sleep,
18 recreate, and learn at Camp Casey, visitors staying in the proposed new cabins or
19 townhouses cannot have all their needs met at Camp Casey. They cannot buy food
20 or gas. However, not having all the facilities to make a planned unit development
21 totally self-contained is not a fatal flaw standing in the way of designation of Camp
22 Casey as an "existing" MPR. The Eastern Washington Growth Management
23 Hearings Board has said this about containment:

24 The GMA use of the phrase "self-contained", does not require a MPR to contain
25 everything it or the visitors need. This would be virtually impossible and would be too
26 strict an interpretation of the language. The better interpretation would require the
27 MPR to have sufficient services and needed places to shop for common needs to be
28 met and avoid an adverse impact upon the neighboring urban areas. The visitors and
29 residences at the MPR should be able to meet their daily needs without being forced
30 to go elsewhere. *Ridge v. Kittitas County*, EWGMHB No. 96-1-0017c (Order on
31 Compliance and Validity, April 16, 1996).¹⁰³
32

¹⁰⁰ Ordinance No. 04-0604-18; Log 2007-025-00035; Log 2016-183-00002.

¹⁰¹ Ex. 2018-121-00049; JCC 18.15.025(2); JCC 17.75.010; JCC 17.75.020.

¹⁰² Ex. 2015-131-00960.

¹⁰³ *Whidbey Environmental Action Network v. Island Cty*, WWGMHB No. 03-2-0008 (FDO, August, 2003) at 21.

1 In *Friends of Agriculture v. Grant County*,¹⁰⁴ the Eastern Board ruled on the meaning
2 of the provision for “self-contained” MPRs:
3

4 The Laughlin "Master Planned Resort", as proposed, has limited services. Certainly
5 the proposal has the capability of supplying the basics available at typical
6 convenience stores, such as gas, milk, bread, picnic foods and even heated pre-
7 made sandwiches, but groceries per se will be limited. The Eastern Board in *Ridge*
8 indicated "sufficient services and needed places to shop". This is where the
9 ambiguity in the language makes it difficult to determine just what is "self-contained",
and whether a convenience store provides "sufficient service".

10 The Board agrees with the Petitioner. "Self-contained" means that a "Master Planned
11 Resort" should be a livable community that can supply the daily needs of those that
12 visit and live there. A convenience store and pro-shop does not fulfill this
13 requirement.

14 Subsection 5 of Jefferson County Code 18.15.126, “Requirements for master
15 planned resorts” states:

16 Self-Contained Development. All necessary supportive and accessory
17 on-site urban-level commercial and other services should be
18 contained within the boundaries of the MPR, and such services shall
19 be oriented to serve the MPR.

20 As to the Pleasant Harbor MPR, Phase 1 of the Phasing Plan has *no* requirement
21 that “sufficient services and needed places to shop” will be constructed. Phase 2(b) has a
22 “Rec Center” but there is *no* indication it has any grocery or other facilities to serve visitors
23 to the MPR.¹⁰⁵ The Development Regulations permit “on-site retail services and businesses
24 typically found in destination resorts and designed to serve the convenience needs of users
25 and employees of the master planned resort,” but do not require retail services and
26 businesses.¹⁰⁶ The Staff Report on the Development Regulations¹⁰⁷ says the proposal is
27 “self-contained,” but also states:
28

29
30 ¹⁰⁴ *Friends of Agriculture v. Grant County*, EWGMHB Case 05-1-0010 (FDO, 2006) at 18.

31 ¹⁰⁵ Ex. 2018-121-00019-00021.

32 ¹⁰⁶ Ex. 2018-105-00008 (JCC 17.65.020(2)(c)).

¹⁰⁷ Ex. 2018-065-00019.

1 All supportive commercial and resort services with the exception of gasoline
2 and to an extent, groceries (a farmer's market on site will provide fresh
3 produce), shall be provided within the resort.

4 However, no seasonal farmer's market is required nor is a market or grocery store
5 shown on either the site plan or the phasing plan. It is difficult to see how this MPR can be
6 self-contained when there is no grocery store to supply food to the 890 residential units in
7 the MPR. Long-term residents of the MPR (35% of units) will have to travel a considerable
8 distance away from the MPR for basic food needs.

9 The record does not show long-term residents (35% of units) being integrated into
10 and supporting the golf course nature of the resort. Also, the record does not show how
11 35% of total residential units being long-term is consistent with the requirement for the MPR
12 to consist of "short-term visitor accommodations."

13 Since the Marina has been removed from the MPR and the Championship 18-hole
14 Golf Course has been downgraded to a much smaller 9-hole course, the record does not
15 show a "primary focus" on "destination" resort facilities and amenities that would attract
16 overnight visitors to a 9-hole golf course.

17 Since the Maritime Village Center primarily supports the external marina, the record
18 indicates this is not consistent with MPR Requirement 2 for a fully integrated planned unit
19 development. The record shows that the Maritime Center would not primarily serve the 9-
20 hole golf course.

21 It is unclear whether the Wastewater Treatment Plant provided on-site shall be
22 limited to meeting the needs of the master planned resort as opposed to the external
23 Marina.

24 **COMPLIANCE WITH RCW 36.70A.360 - CONCLUSION**

25 The Pleasant Harbor MPR would authorize significant new urban growth into a rural
26 area and must be reviewed for compliance with the GMA standards for a "destination"
27 resort. Since the 2008 map amendment, there have been major changes to the MPR
28
29
30
31
32

1 boundaries and amenities. In light of the evidence in the record showing inconsistencies
2 with the MPR requirements in RCW 36.70A.360, and given the absence of any specific
3 County findings on compliance with RCW 36.70A.360 for the significantly changed
4 proposal, I would find and conclude that Petitioners have satisfied their burden of proof and
5 would remand this matter to Jefferson County to comply with the MPR requirements of
6 RCW 36.70A.360.
7

8
9
10

Raymond L. Paolella, Board Member

11
12 **NOTE: This is a final decision and order of the Growth Management Hearings Board**
13 **issued pursuant to RCW 36.70A.300.¹⁰⁸**
14

15
16
17
18
19
20
21
22
23
24
25
26
27
28 ¹⁰⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
29 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved
30 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in
31 RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the
32 board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It
is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management
Hearings Board is not authorized to provide legal advice.

1 **Appendix A: Procedural matters**

2 On August 3, 2018, The Brinnon Group (Petitioner) filed a petition for review. The
3 petition was assigned Case No. 18-2-0005.

4 A prehearing conference was held telephonically on September 4, 2018. Petitioner
5 appeared through its counsel Richard J. Aramburu. Respondent Jefferson County (County)
6 appeared through its attorney Philip C. Hunsucker.
7

8 On August 27, 2018, Petitioner filed a Motion to Change Hearing Date. Motion was
9 granted. On September 17, 2018, Intervenor filed a Motion for Partial Dismissal. The motion
10 was deferred until after the hearing on the merits.

11 The Briefs and exhibits of the parties were timely filed and are referenced in this
12 order as follows:

- 13 • Petitioner Brinnon Group’s Opening Brief (November 1, 2018).
- 14 • Respondent Jefferson County’s Response Brief (November 26, 2018).
- 15 • Intervenor’s Response Brief (November 26, 2018).
- 16 • Reply Brief from Petitioner (December 6, 2018).
- 17
- 18

19 Hearing on the Merits

20 The hearing on the merits convened December 18, 2018, in Port Townsend,
21 Washington. The hearing afforded each party the opportunity to emphasize the most
22 important facts and arguments relevant to its case. Board members asked questions
23 seeking to thoroughly understand the history of the proceedings, the important facts in the
24 case, and the legal arguments of the parties.
25
26
27
28
29
30
31
32

Appendix B: Legal Issues

Per the Prehearing Order, legal Issues in this case were as follows:

1. Did Jefferson County fail to comply with the State Environmental Policy Act, Chapter 43.21C RCW (SEPA), the SEPA Rules, Chapter 197-11 WAC and local Jefferson County SEPA regulations by failing to consider the environmental impacts of the “Pleasant Harbor Golf Terrace Recreation and Conference Center/Spa” in the Master Plan and Phasing Plan? See WAC 197-11-158; 197-11-340(3)(ii); 197-11-600. (Not briefed by Petitioner; dismissed.)
2. Did the MPR Ordinances fail to comply with the terms of RCW 36.70A.360, the Jefferson County Comprehensive Plan and its adopting Ordinance 01-0128-08 because these ordinances:
 - a) Do not meet the requirements for an adequate description of destination resort facilities found in RCW 36.70C.360 and in Ordinance 01-0128-08, Paragraphs 63(d), (u), and (v)?
 - b) Do not meet the requirement of Paragraph 63(m) of Ordinance 01-0128-08 that “no deforestation or grading will be permitted prior to establishing adequate water right and an adequate water supply” because Exhibit 4 to the development agreement provides for extensive site grading in Phase 1a, while provisions for water storage and distribution are only allowed in Phase 1b?
 - c) Do not meet the requirements of Ordinance 01-0128-08, Paragraph 63(u) and (v) and JCC 18.15.126(10)(d) because the Master Plan Drawings at Exhibit 2 and Exhibit 4 are contradictory, showing uses in different locations and features that are not reconcilable and are not shown in sufficient detail to meet the requirements of these codes?
 - d) Do not meet the requirements of RCW 36.70A.360(1) and WAC 365-196-460(2) requiring MPRs to have “a primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities?”
 - e) Do not meet the requirements of Ordinance 01-0128-08 Paragraphs (u) and (v) because they do not show of screening of facilities and amenities, do not demonstrate that proposed structures are “harmonious with each other to protect natural features, historic and public views,” and do not show that buildings will be “constructed and placed to blend into the terrain and

1 landscape with park-like greenbelts between the buildings” partly because
2 Master Plan drawings are contradictory and do not show a consistent
3 development of the property?

4 f) Do not meet the requirements of RCW 36.70A.360 and Ordinance 01-0128-
5 08, Paragraphs 63(d), (u) and (v) as the Phasing Plan (Exhibit 4) shows the
6 short term accommodations and the primary destination resort recreational
7 facility, the golf course, coming in the second phase, after construction of
8 the permanent residential units in Phase 1?

9 g) Do not meet the requirements of RCW 36.70A.360(1) and (3), Ordinance
10 01-0128-08, Paragraph 32 and JCC 18.15.123(2) because Exhibits 2 and 4
11 do not specify which units will be “short-term visitor accommodations” as
12 opposed to permanent residential units and because the applicant fails to
13 provide a sufficient definition of “short-term visitor accommodations?”

14 h) Do not meet the criteria of RCW 36.70A.360(1), Ordinance 01-0128-08, and
15 Jefferson County Comprehensive Plan Land Use Policy 24.9 because the
16 plans are inadequate to allow a determination that the development will be
17 a fully integrated planned unit development and resort?

18 i) Do not meet the criteria of RCW 36.70A.360(1), Ordinance 01-0128-08,
19 Paragraph 32 and JCC 18.15.126(2) and (5) because even the incomplete,
20 contradictory development described in the Master Plans would not be a
21 “self-contained and fully integrated planned unit development?”

22 j) Do not meet the requirements of RCW 36.70A.360(1) and Ordinance 01-
23 0128-08, Paragraph 63(d) because the Master Plans and ordinances do not
24 provide a “list of required amenities...in the development agreement along
25 with conditions for public access...”?

26 k) Do not meet the requirement of the Jefferson County Comprehensive Plan
27 and Ordinance 01-0128-08, Section 2, page 16 that the proposal contain a
28 “community center?”

29 3. Do the development regulations found in Ordinance 03-0604-18 provide (a)
30 meaningful regulation of the MPR as required by RCW 36.70A.360(1), Ordinance
31 01-0128-08, Paragraph 33, and JCC 18.40.840(1), and (b) an “internal zoning
32 map and internal zoning code” (*Id.*, Ordinance 01-0128-08) when the adopted
provisions for the MPR-GR zone (in Chapter 17.65) lack meaningful restrictions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

on uses, setbacks, design and height within the MPR area sufficient to be a planned unit development?

- 4. Does the approval meet the requirements of RCW 36.70A.360(1), JCC 18.15.126(1)(I) and JCC 18.15.135 when it fails to contain conditions or standards for the project to stand alone as a MPR if development ceases before all phases are complete?

- 5. Does the approval meet the requirements of RCW 36.70A.360(1), JCC 18.15.126(1)(I) and JCC 18.15.135 when there is no demonstration that the developer has sufficient experience and financial backing to manage the proposed large-scale and long term venture?

**Appendix C:
Ordinance No. 01-0128-08 Paragraph 63 with 30 Conditions**

63. In consideration of the public interest, and pursuant to the authority that is granted the County legislative authority under SEPA by RCW 43.21C.060, WAC 197-11-660 and Jefferson County Code 18.40.770, the Board enters certain of the following conditions for approval of the CP amendment MLA06-87, recognizing that certain of the conditions listed here are imposed not in reliance upon SEPA but instead pursuant to the Board's general police power as a legislative body [arising from Article XI, § 11 of the State Constitution and RCW 36.32.120(7)], particularly conditions d, e, f, g, v, x, aa and bb:

- a) Any analysis of environmental impacts is to be based on science and data pertinent to the Brinnon site. This includes rainfall projections, runoff projections, and potential impacts on Hood Canal.
- b) All applications will be given an automatic SEPA threshold determination of Determination of Significance (DS) at the project level except where the SEPA-responsible official determines that the application results in only minor construction.
- c) The project developer will be required to negotiate memoranda of understanding (MOU) or memoranda of agreement (MOA) to provide needed support for the Brinnon school, fire district, Emergency Medical Services (EMS), housing, police, public health, parks and recreation, and transit prior to approval of the development agreement. Such agreements will be encouraged specifically between the developer and the Pleasant Tides Yacht Club, and with the Slip owner's Association regarding marina use, costs, dock access, loading and unloading, and parking.
- d) A list of required amenities shall be in the development agreement along with conditions for public access.
- e) Statesman shall advertise and give written notice at libraries and post offices in East Jefferson County and recruit locally to fill opportunities for contracting and

1 employment, and will prefer local applicants provided they are qualified, available,
2 and competitive in terms of pricing.

- 3 f) Statesman will prioritize the sourcing of construction materials from within
4 Jefferson County.
- 5 g) The developer shall commission a study of the number of jobs expected to be
6 created as a direct or indirect result of the MPR that earn 80% or less of the
7 Brinnon area average median income (AMI). The developer shall provide
8 affordable housing (e.g., no more than 30% of household income) for the Brinnon
9 MPR workers roughly proportional to the number of jobs created that earn 80% or
10 less of the Brinnon area AMI. The developer may satisfy this condition through
11 dedication of land, payment of in lieu fee, or onsite housing development.
- 12 h) The possible ecological impact of the development's water plan that alters kettles
13 for use as water storage must be examined, and possibly one kettle preserved.
- 14 i) Any study done at the project level pursuant to SEPA (RCW 43.21C) shall include
15 a distinct report by a mutually chosen environmental scientist on the impacts to
16 the hydrology and hydrogeology of the MPR location of the developer's intention
17 to use one of the existing kettles for water storage. Said report shall be peer-
18 reviewed by a second scientist mutually chosen by the developer and the county.
19 The developer will bear the financial cost of these reports.
- 20 j) Tribes should be consulted regarding cultural resources, and possibly one kettle
21 preserved as a cultural resource.
- 22 k) As a condition of development approval, prior to the issuance of any shoreline
23 permit or approval of any preliminary plat, there shall be executed or recorded
24 with the County Auditor a document reflecting the developer's written
25 understanding with and among the following: Jefferson County, local tribes, and
26 the Department of Archaeology and Historical Preservation, that includes a
27 cultural resources management plan to assure archaeological investigations and
28 systematic monitoring of the subject property prior to issuing permits; and during
29
30
31
32

1 construction to maintain site integrity, provide procedures regarding future
2 ground-disturbing activity, assure traditional tribal access to cultural properties
3 and activities, and to provide for community education opportunities.

- 4 l) A wildlife management plan focused on non-lethal strategies shall be developed
5 in the public interest in consultation with the Department of Fish and Wildlife and
6 local tribes, to prevent diminishment of tribal wildlife resources cited in the Brinnon
7 Sub-Area Plan (e.g., deer, elk, cougar, waterfowl, osprey, eagles, and bear), to
8 reduce the potential for vehicle collisions on U.S. Highway 101, to reduce the
9 conflicts resulting from wildlife foraging on high-value landscaping and attraction
10 to fresh water sources, to reduce the dangers to predators attracted to the area by
11 prey or habitat, and to reduce any danger to humans.
- 12 m) No deforestation or grading will be permitted prior to establishing adequate water
13 rights and an adequate water supply.
- 14 n) Approval of a Class A Water System by the Washington Department of Health,
15 and approval of a Water Rights Certificate by the Department of Ecology shall be
16 required prior to applying for any Jefferson County permits for plats or any new
17 development.
- 18 o) Detailed review is needed at the project-level SEPA analysis to ensure that water
19 quantity and water quality issues are addressed. The estimated potable water use
20 is based on a daily residential demand used to establish the Equivalent
21 Residential Units (ERU) for the development using a standard of 175 gallons per
22 day (gpd). The goal of the development is 70 gpd. All calculations for water use at
23 any stage shall be based on the standard of 175 gpd.
- 24 p) A Neighborhood Water Policy shall be established that requires Statesman to
25 provide access to the water system by any neighboring parcels if saltwater
26 intrusion becomes an issue for neighboring wells on Black Point, and reserve
27 areas for additional recharge wells will be included in case wells fail, are
28 periodically inoperable, or cause mounding.
29
30
31
32

- 1 q) Stormwater discharge from the golf course shall meet requirements of zero
2 discharge into Hood Canal. To the extent necessary to achieve the goal of
3 designing and installing stormwater management infrastructures and techniques
4 that allow no stormwater run-off into Hood Canal, Statesman shall prepare a soil
5 study of the soils present at the MPR location. Soils must be proven to be
6 conducive to the intended infiltration either in their natural condition or after
7 amendment. Marina discharge shall be treated by a system that reduces
8 contamination to the greatest possible extent.
- 9
- 10 r) A County-based comprehensive water quality monitoring plan specific to Pleasant
11 Harbor requiring at least monthly water collection and testing will be developed
12 and approved in concert with an adaptive management program prior to any site-
13 specific action, utilizing best available science and appropriate state agencies.
14 The monitoring plan shall be funded by a yearly reserve, paid for by Statesman,
15 that will include regular offsite sampling of pollution, discharge, and/or
16 contaminant loading, in addition to any onsite monitoring regime.
- 17
- 18 s) The developer must ensure that natural greenbelts will be maintained on U.S.
19 Highway 101 and as appropriate on the shoreline. Statesman shall record a
20 conservation easement protecting greenbelts and buffers to include, but not be
21 limited to, a 200-foot riparian buffer along the steep bluff along the South Canal
22 shoreline, the strip of mature trees between U.S. Highway 101 and the Maritime
23 Village, wetlands, and wetland buffers. Easements shall be perpetual and
24 irrevocable recordings dedicating the property as natural forest land buffers.
25 Statesman, at its expense, shall manage these easements to include removing,
26 when appropriate, naturally fallen trees, and replanting to retain a natural visual
27 separation of the development from Highway 101.
- 28
- 29 t) The marina operations shall conduct ongoing monitoring and maintain an
30 inventory regarding Tunicates and other invasive species, and shall be required to
31 participate with the County and state agencies in an adaptive management
32

1 program to eliminate, minimize, and fully mitigate any changes arising from the
2 resort, and related to Pleasant Harbor or the Maritime Village.

- 3 u) In keeping with the MPR designation as located in a setting of natural amenities,
4 and in order to satisfy the requirements of the Shoreline Master Program (JCC
5 18.15.135(1),(2),(6), the greenbelts of the shoreline should be retained and
6 maintained as they currently exist in order to provide for “the screening of facilities
7 and amenities so that all uses within the MPR are harmonious with each other,
8 and in order to incorporate and retain, as much as feasible, the preservation of
9 natural features, historic sites, and public views.” In keeping with Comprehensive
10 Plan Land Use Policy 24.9, the site plan for the MPR shall “be designed to blend
11 with the natural setting and, to the maximum extent possible, screen the
12 development and its impacts from the adjacent rural areas.” Evergreen trees and
13 understory should remain as undisturbed as possible. Statesman shall infill plants
14 where appropriate with indigenous trees and shrubs.
- 15 v) In keeping with an approved landscaping and grading plan, and in order to satisfy
16 the intent of JCC 18.15.135(6), and with special emphasis at the Maritime Village,
17 the buildings should be constructed and placed in such a way that they will blend
18 into the terrain and landscape with park-like greenbelts between the buildings.
- 19 w) Construction of the MPR buildings will be completed in a manner that strives to
20 preserve trees that have a diameter of 10 inches or greater at breast height (dbh).
21 An arborist will be consulted and the ground staked and flagged to ensure the
22 roots and surrounding soils of significant trees are protected during construction.
23 To the extent possible, trees of significant size (i.e., 10 inches or more in diameter
24 at breast height (dbh)) that are removed during construction shall be made
25 available with their root wads intact for possible use in salmon recovery projects.
- 26 x) Statesman shall use the LEED (Leadership in Energy and Environmental Design)
27 and “Green Built” green building rating system standards. These standards,
28 applicable to commercial and residential dwellings respectively, “promote design
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

and construction practices that increase profitability while reducing the negative environmental impacts of buildings, and improving occupant health and well-being.”

- y) There shall be included as a best management practice for the operation and maintenance of a golf course within the MPR that requires the developer to maintain a log of fertilizers, pesticides, and herbicides used on the MPR site, and this information will be made available to the public.
- z) Statesman shall use the International Dark Sky Association (IDA) Zone E-1 standards for the MPR. These standards are recommended for “areas with intrinsically dark landscapes” such as national parks, areas of outstanding natural beauty, or residential areas where inhabitants have expressed a desire that all light trespass be limited.
 - aa) In fostering the economy of South Jefferson County by promoting tourism, the housing units at the Maritime Village should be limited to rentals and time-shares; or, at the very least, it should be mandated that each section be required to keep the ratio of 65% to 35% of rental and time-shares to permanent residences per JCC 18.15.123(2).
 - bb) Verification of the ability to provide adequate electrical power shall be obtained from the Mason County Public Utility District.
 - cc) Statesman Corporation shall collaborate with the Climate Action Committee (CAC) to calculate greenhouse gas emissions (GHGs) associated with the MPR, and identify techniques to mitigate such emissions through sequestration and/or other acceptable methods.
 - dd) Statesman Corporation is encouraged to work with community apprentice groups to identify and advertise job opportunities for local students.